

requirements for an appeal brief as set out in §41.37 of this subpart. A reply brief may not exceed 20 pages, excluding any table of contents, table of authorities, and signature block, required by this section. A request to exceed the page limit shall be made by petition under §41.3 of this part and filed at least ten calendar days before the reply brief is due. A reply brief must contain, under appropriate headings and in the order indicated, the following items:

- (1) Table of contents—*see* §41.37(i) of this subpart.
- (2) Table of authorities—*see* §41.37(j) of this subpart.
- (3) [Reserved]
- (4) Statement of additional facts—*see* paragraph (f) of this section.
- (5) Argument—*see* paragraph (g) of this section.
- (e) [Reserved]
- (f) *Statement of additional facts.* The “statement of additional facts” shall consist of a statement of the additional facts that appellant believes are necessary to address the points raised in the examiner’s answer and, as to each fact, must identify the point raised in the examiner’s answer to which the fact relates.
- (g) *Argument.* Any arguments raised in the reply brief which are not responsive to points made in the examiner’s answer will not be considered and will be treated as waived.
- (h) [Reserved]
- (i) *No amendment or new evidence.* No amendment or new evidence may accompany a reply brief.

§41.43 Examiner’s response to reply brief.

(a)(1) After receipt of a reply brief in compliance with §41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner’s answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner’s answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner’s answer is furnished by the examiner, appellant may file another reply brief under §41.41 to any supplemental examiner’s answer within two months from the date of the supplemental examiner’s answer.

(c) Extensions of time under §1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See §1.136(b) of

this title for extensions of time to reply for patent applications and §1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

EFFECTIVE DATE NOTE: At 73 FR 32976, June 10, 2008, §41.43 was removed, effective December 10, 2008. Per a subsequent final rule published at 73 FR 74972, Dec. 10, 2008, the effective date of this action was delayed indefinitely.

§41.47 Oral hearing.

(a) An oral hearing shall be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned “REQUEST FOR ORAL HEARING,” a written request for such hearing accompanied by the fee set forth in §41.20(b)(3) within two months from the date of the examiner’s answer or supplemental examiner’s answer.

(c) If no request and fee for oral hearing have been timely filed by appellant as required by paragraph (b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d) If appellant has complied with all the requirements of paragraph (b) of this section, a date for the oral hearing will be set, and due notice thereof given to appellant. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. A hearing will be held as stated in the notice, and oral argument will ordinarily be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered.

(e)(1) Appellant will argue first and may reserve time for rebuttal. At the oral hearing, appellant may only rely on evidence that has been previously entered and considered by the primary examiner and present argument that has been relied upon in the brief or

reply brief except as permitted by paragraph (e)(2) of this section. The primary examiner may only rely on argument and evidence relied upon in an answer or a supplemental answer except as permitted by paragraph (e)(2) of this section.

(2) Upon a showing of good cause, appellant and/or the primary examiner may rely on a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(f) Notwithstanding the submission of a request for oral hearing complying with this rule, if the Board decides that a hearing is not necessary, the Board will so notify appellant.

(g) Extensions of time under §1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See §1.136(b) of this title for extensions of time to reply for patent applications and §1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

EFFECTIVE DATE NOTE: At 73 FR 32976, June 10, 2008, §41.47 was revised, effective December 10, 2008. Per a subsequent final rule published at 73 FR 74972, Dec. 10, 2008, the effective date of this rule was delayed indefinitely.

For the convenience of the user, the revised text is set forth as follows:

§41.47 Oral hearing.

(a) *Request for oral hearing.* If appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned:

“REQUEST FOR ORAL HEARING”.

(b) *Fee.* A request for oral hearing shall be accompanied by the fee required by §41.20(b)(3) of this part.

(c) *Time for filing request for oral hearing.* Appellant must file a request for oral hearing within two months from the date of the examiner's answer.

(d) *Extension of time to file request for oral hearing.* A request for an extension of time shall be presented as a petition under §41.3 of this part.

(e) *Date for oral hearing.* If an oral hearing is properly requested, the Board shall set a date for the oral hearing.

(f) *Confirmation of oral hearing.* Within such time as may be ordered by the Board, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance will be taken as a waiver of any request for an oral hearing.

(g) *List of terms.* At the time appellant confirms attendance at the oral hearing, appel-

lant shall supply a list of technical terms and other unusual words which can be provided to any individual transcribing an oral hearing.

(h) *Length of argument.* Unless otherwise ordered by the Board, argument on behalf of appellant shall be limited to 20 minutes.

(i) *Oral hearing limited to Record.* At oral hearing only the Record will be considered. No additional evidence may be offered to the Board in support of the appeal. Any argument not presented in a brief cannot be raised at an oral hearing.

(j) *Recent legal development.* Notwithstanding paragraph (i) of this section, an appellant or the examiner may rely on and call the Board's attention to a recent court or Board opinion which could have an effect on the manner in which the appeal is decided.

(k) *Visual aids.* Visual aids may be used at an oral hearing, but must be limited to documents or artifacts in the Record or a model or an exhibit presented for demonstration purposes during an interview with the examiner. At the oral hearing, appellant shall provide one copy of each visual aid (photograph in the case of an artifact, a model or an exhibit) for each judge and one copy to be added to the Record.

(l) *Failure to attend oral hearing.* Failure of an appellant to attend an oral hearing will be treated as a waiver of oral hearing.

§41.50 Decisions and other actions by the Board.

(a)(1) The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmation of the rejection of a claim on any of the grounds specified constitutes a general affirmation of the decision of the examiner on that claim, except as to any ground specifically reversed. The Board may also remand an application to the examiner.

(2) If a supplemental examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must within two months from the date of the supplemental examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding:

(i) *Reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under §1.111 of this title with or without amendment